

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

1800 THIRD STREET, Room 430
P.O. Box 952053
Sacramento, CA 94252-2053
(916) 323-3176 FAX 327-2643



HPD 98-03

December 30, 1998

MEMORANDUM FOR: Owners of Federally-Assisted Multifamily
Rental Housing Projects
Cathy E. Creswell
FROM: Cathy E. Creswell, Acting Deputy Director
SUBJECT: State of California First Right of Refusal Requirements

Owners of federally-assisted multifamily rental housing projects that intend to sell or dispose of a project, resulting in either the discontinuance of its use as an assisted housing development or the termination of low-income use restrictions, are required to provide the first right of refusal to purchase the property to certain entities that agree to keep the property affordable. The purpose of this letter and the attached information bulletin on First Right of Refusal Requirements is to advise you of your obligations under California law which are in addition to any obligations of federal law.

Very generally, California law requires that nine months before the sale of a federally-assisted property, the owner must send a detailed notice of the impending sale to entities agreeing to continue affordability that either: (a) contact the owner directly; or (b) appear on a list of interested purchasers made available to owners by the State of California Department of Housing and Community Development (HCD).

In addition to the information bulletin on First Right of Refusal Requirements, we have attached a list of entities that have informed HCD of their potential interest in purchasing federally-assisted properties. (There could be others that may contact you directly.) If you intend to sell the property and the sale would result in discontinuance of the project as affordable housing, **you are required to send a notice of your intent to sell the project to those entities listed under "All Counties" and any additional entities listed under the county in which your project is located.** The information bulletin on First Right of Refusal Requirements details the required contents of these notices.

Owners of Federally-Subsidized Multifamily Housing Projects

Page 2

IT IS IMPORTANT TO NOTE that, pursuant to California law, during the first 120 days after an owner gives notice of intent to sell, he/she may only sell the property to a tenant organization. For the following 60 days, the owner may only sell to another entity that agrees to maintain the project as affordable housing. At the end of this 180-day period, the owner may make the property available to any buyer. However, any qualified purchaser which made a bona fide offer to purchase the property during the first 180-day period must be given the opportunity to match any purchase offer from another buyer for the 180 days following the first 180-day period. These California requirements are detailed and we encourage you to review the attached information bulletin carefully.

The first right of refusal period commences when an owner provides notice to the project's tenants and public agencies as required by Government Code Section 65863.10 and intends to sell or dispose of the property. Please refer to that section of the Government Code or information on the HCD Web Site (housing.hcd.ca.gov) under "Preservation" for further information on those noticing requirements.

Since the first right of refusal is a complex area of law, we recommend that you consult your own legal counsel for further advice on these State requirements. If you have questions regarding this memorandum or California's first right of refusal requirements, you may contact the Department of Housing and Community Development, Division of Housing Policy Development at (916) 323-3176.

Attachments

**FIRST RIGHT OF REFUSAL
TO PURCHASE FEDERALLY-SUBSIDIZED MULTIFAMILY HOUSING
CONVERTING TO MARKET-RATE HOUSING**

In California, owners of certain types of federally-subsidized rental housing projects are prohibited from selling the project for conversion to market-rate housing without first offering a project to purchasers who agree to maintain the affordability of the project. In addition, the Department of Housing and Community Development (HCD) is required to inform both owners and potential purchasers of their respective rights and obligations under this “first right of refusal.” The purpose of this bulletin is to summarize these rights and obligations and to further explain HCD’s role in disseminating information on the first right of refusal. Please refer to Government Code Sections 65863.10 and 65863.11 for a more comprehensive description of the requirements.

A. STATE LAW LIMITATIONS ON AN OWNER'S RIGHT TO SELL
[Government Code Section 65863.11(b)]

ANY OWNER of a federally-assisted development who did not, prior to January 1, 1991, give notice to tenants and the city or county in which the development is located of the owner's intent to terminate federal subsidies or prepay a federal mortgage, and

WHO INTENDS TO SELL in a manner which would result in termination of any affordability restrictions or discontinuance of use of the property for assisted housing,

SHALL FIRST OFFER to sell the development to specified housing providers in a specified manner.

B. AFFECTED PROPERTIES [Government Code Section 65863.11(a)(1)]

The above requirements apply to any multifamily rental housing development for which a statement has been recorded indicating that it is an assisted housing development, and which receives governmental assistance under any of the following federal programs:

1. HUD-assisted

- Section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation, Property Disposition and Loan Management Set-aside programs, or any other program providing project-based assistance under Section 8 of the United States Housing Act of 1937, as amended;

- Section 221(d)(3) Below-Market-Interest-Rate Mortgage Insurance Program;
 - Section 236 Interest Reduction Payment Program;
 - Section 202 Direct Loans for Elderly and Handicapped Persons; and
 - Section 101 Rent Supplement Program.
2. FmHA-assisted
- Section 515 Rural Rental Housing Loan Program.

C. POTENTIAL PURCHASERS [Government Code Section 65863.11(c)]

Persons and entities which potentially have a first right of refusal include:

1. Tenant Association of the Development
2. Local Nonprofit Organizations and Public Agencies
3. Regional or National Nonprofit Organizations and Public Agencies
4. Profit-Motivated Organizations Or Individuals

D. QUALIFIED PURCHASERS [Government Code Section 65863.11(d)]

Hereafter, persons or entities meeting the requirements listed below are referred to as “qualified purchasers.” To qualify as a purchaser, a person or entity from the above list must:

1. Be capable of managing the housing for its remaining useful life either by itself or through a management agent;
2. Agree to obligate itself and any successors to keep the housing development affordable to persons and families of low or moderate income and very low income for either a 30-year period from the time of purchase or the remaining term of the existing federal government assistance, whichever is greater; and
3. Maintain the occupancy of very low, low and moderate income tenants in the approximate percentages that existed at the time the notice of intent to sell was given, or the approximate percentages specified in the existing use restrictions, whichever is higher.

A local nonprofit organization or public agency is prohibited from purchasing a development in which a member of its governing board has a financial interest.

E. OWNER NOTICE REQUIREMENTS

[Government Code Section 65863.11(f)]

AT LEAST NINE MONTHS prior to the anticipated termination of a subsidy contract or mortgage prepayment which would result in either a termination of low income use restrictions or termination of the development's use for affordable housing,

THE OWNER MUST GIVE NOTICE of the owner's intent to sell

TO ANY QUALIFIED PURCHASER that contacts the owner directly as well as each qualified purchaser on any list provided to the owner by HCD. The owner must send the notice to these qualified purchasers by registered or certified mail, return receipt requested, and the owner must also post a copy of the notice in a conspicuous place in the common area of the development.

IF THE OWNER ALREADY HAS A BONA FIDE OFFER FROM A QUALIFIED PURCHASER, THE OWNER IS NOT REQUIRED TO GIVE THE ABOVE NOTICES.

F. REQUIRED CONTENTS OF OWNER'S NOTICE OF INTENT TO SELL

[Government Code Section 65863.11(g)]

The initial notice of an owner's intent to sell must contain the following information:

1. Sales price.
2. Terms of assumable financing, if any.
3. Terms of the subsidy contract, if any.
4. Proposed improvements to the development to be made by the owner in connection with the sale, if any.
5. A statement that each qualifying purchaser has the right to purchase the development in the priority order in listed in Government Code Section 65863.11(h).

6. A statement that the owner will make available to each qualified purchaser, within 15 days of receiving a request, itemized lists of the following information:
 - a. Monthly operating expenses;
 - b. Capital improvements as determined by the owner made within each of the two preceding calendar years;
 - c. The amount of the project reserves;
 - d. Copies of the two most recent financial and physical inspection reports on the development, if any, filed with federal, state or local agencies;
 - e. The most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date of the notice of intent; and
 - f. The vacancy rate for the development for each of the two preceding calendar years.

G. PURCHASE OFFER CONDITIONS

[Government Code Sections 65863.11(h), (i), and (l)]

1. A qualified purchaser wishing to purchase an assisted development must:
 - a. Make a bona fide offer to purchase within 180 days from the date of the owner's notice of intent to sell;
 - b. Identify itself as a tenant association, nonprofit organization, public agency, or profit-motivated organization or individual; and
 - c. Certify, under penalty of perjury, that it meets the qualifying obligations set forth in Government Code Section 65863.11(d).
2. **DURING THE FIRST 120 DAYS FROM THE DATE OF THE OWNER'S BONA FIDE NOTICE OF INTENTION TO SELL, THE OWNER MAY ONLY ACCEPT OFFERS FROM THE TENANT ASSOCIATION OF THE DEVELOPMENT. FOR THE FOLLOWING 60 DAYS, THE OWNER MAY ACCEPT BONA FIDE OFFERS FROM ANY OTHER QUALIFIED PURCHASER.**

3. If no purchase agreement has been executed at the end of 180 days from the notice of intent to sell, the owner may accept a bona fide purchase offer from a person or entity other than a qualified purchaser.
4. For 180 days following the first 180-day period, before the owner may accept a purchase offer from a person or entity other than a qualified purchaser, the owner must notify all qualified purchasers that had earlier made a purchase offer and give those qualified purchasers the opportunity to purchase the development on the same terms and conditions. The owner is required to notify these qualified purchasers by registered or certified mail, return receipt requested. The qualified purchasers then have 15 days from the date the notice is mailed to submit a bona fide offer to the owner. If the offer is on the same terms and conditions, the owner must accept the qualified purchaser's offer.

H. EXCEPTIONS [Government Code Section 65863.11(m)]

The above notice and first right of refusal provisions do not apply to:

1. A government taking by eminent domain or negotiated purchase;
2. A forced sale pursuant to a foreclosure;
3. A transfer by gift, devise, or operation of law;
4. A sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or
5. An owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development.

I. OWNER'S CERTIFICATION WHEN NOT SELLING TO A QUALIFIED PURCHASER [Government Code Section 65863.11(o)]

When not selling, leasing, or otherwise disposing of a development to a qualified purchaser, an owner must certify, under penalty of perjury, that he/she has complied with all the provisions of Government Code Sections 65863.10 and 65863.11. This certification must contain a legal description of the property, be indexed to the name of the owner as grantor, and be recorded.

J. HCD's OBLIGATIONS [Government Code Section 65863.11(p)]

1. In addition to preparing and circulating this information bulletin, HCD is required to compile, maintain, and update a list of potential purchasers made up of entities that have contacted HCD directly and entities that HCD has identified as potentially interested in purchasing developments under the first right of refusal (the "HCD list"). HCD is obligated to publicize the existence of the HCD list statewide, which it does through circulation of this information bulletin.
2. Upon receipt of an owner's notice of intent to terminate use restrictions on a federally-subsidized multifamily development, HCD must make the HCD list available to the owner proposing the termination or removal of government assistance.